

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AMENDED CIVIL MINUTES

Date: July 30, 2021	Time: 9:58 – 10:22 24 minutes	Judge: SUSAN ILLSTON
Case No.: 19-cv-00565-SI	Case Name: Avaya Inc. v. Pearce, et al.	

Attorney for Plaintiff: Zachary Alinder, Lyndsey Heaton, Angela He

Attorney for Defendant: Mateo Fowler (Metroline)

Deputy Clerk: Esther Chung

Court Reporter: Katherine Sullivan

PROCEEDINGS

Motion to Dismiss (dkt. 286) – held via Zoom webinar.

SUMMARY

The Court provided its tentative ruling on the Motion and questioned the parties about specifics. The parties provided their Oral arguments. The Court affirmed its tentative ruling.

- Motion to dismiss counterclaims granted with leave to amend within 30 days (8/31/21). Metroline must allege specific facts in support of claims that Avaya engaged in unfair competition and copyright misuse. Metroline must clarify what it claims is illegal about the way Avaya licenses its software and what it claims Avaya is doing to stifle competition in secondary reseller market. Amended counterclaims may not include allegations based on the filing of Avaya’s TAC or any allegations contained in TAC. Allegations of alleged misrepresentations must be pled with particularity consistent with FRCP 9(b) and all allegations must be supported by facts.
- Motion to strike sixth affirmative defense granted without leave to amend. Motions to strike fifth and twelfth affirmative defenses granted with leave to amend; motions to strike first, fourteenth, sixteenth, eighteenth, twentieth and twenty-first affirmative defenses granted by consent of plaintiff.
- Anti-SLAPP motion deferred until the filing of amended pleadings.
- Request for judicial notice granted.

For the reasons stated on the record, Court granted plaintiff’s motion to dismiss and request for judicial notice. Metroline shall file an amended answer and counterclaims by August 30. The Court will review the anti-SLAPP motion in connection with the amended counterclaims.

CASE CONTINUED: Further Case Management Conference set on **October 8, 2021 at 2 p.m.**
via Zoom webinar.

Joint Case Management Statement due by **October 1, 2021.**